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FILED

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**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

SAUNDRIA WHITMER, ROBBIN
MURDOCK, RONALD MURDOCK, JOYCE
MURDOCK, MAC. E MURDOCK, STUART
MURDOCK, AND BENNY MURDOCK

Petitioners,

v.

MOUNTAIN OIL AND GAS, INC. AND
HOMELAND GAS AND OIL, LTD.

Respondents,

KARNEL MURDOCK , SHIRLY REED, and
JUNE MURDOCK

Intervenors

DIVISION'S RESPONSE

AND

RECOMMENDATIONS
TO THE BOARD

Docket No. 2010-001
Docket No. 2010-002
Docket No. 2010-003
Docket No. 2010-004
Docket No. 2010-005
Docket No. 2010-006
Docket No. 2010-007
Docket No. 2010-014
Docket No. 2010-018

Cause No. 131-127

This consolidated matter consists of nine petitions filed pursuant to Utah Code § 40-6-9 (2010) by individuals all claiming that they are entitled to payment from the sale of oil from one well. At the January 27, 2010 Board hearing, seven petitions (Docket Nos. 2010-001 to 007) were

consolidated and referred to the Division for investigation and negotiations of the claims against Respondents, Mountain Oil and Gas, Inc. and Homeland Gas and Oil, Ltd,. Subsequently the Board allowed two additional petitions (Docket Nos. 2010-014 and 2010-018) to be joined in this action.

As a result of the investigations and negotiations, two of the Petitioners, Stuart Murdock and Ronald Murdock reached a settlement with the Respondents. The remaining seven Petitioners were not able to settle. The Division has filed a report of its investigation and negotiations attached as Exhibit 1.

THE STATUTORY PROVISIONS

Utah Code § 40-6-9 (2010) sets minimum guidelines for timely payment of oil and gas proceeds¹ to those entitled to payment and requires escrow of payments in disputed cases.² In addition this statute provides that claims to payments or proceeds from production of oil and gas may be referred to the Division for investigations and to facilitate negotiations.³ After a report of the Division's investigations, the Board may set a hearing for limited purposes of determining if an escrow was established for disputed payments, if there was reasonable justification for a delay in payment and to impose additional sanctions if appropriate.⁴ The above-identified matters have been investigated and negotiations conducted by the Division in accordance with these provisions and are now before the Board to hear the Division's report.

¹ Utah Code §40-6-9(2010) Subsections (1) and (2) sets limits governing the timing of payments "unless other periods or arrangements are provided for in a valid contract."

² Utah Code §40-6-9(2010) Subsection (3)(a) provides that "any delay in determining whether a person is legally entitled to an interest does not affect payment to other persons entitled to payment" and subsection (3)(b) states that "if accrued payment cannot be made within the time limits specified in subsection (1) or (2), the payor shall deposit all oil and gas proceeds credited to the eventual oil and gas proceeds owner to an escrow account in a federally insured bank or savings and loan institution using a standard escrow document form."

³ Utah Code §40-6-9(2010) Subsection (5)

⁴ Utah Code §40-6-9(2010) Subsection (7)

At this hearing, the Board *may* set a date for a further hearing of the matters for the purposes set forth in subsection (7) of Utah Code § 40-6-9 (2010); i.e., determining if proceeds were deposited in an interest bearing escrow account, and if not, requiring a complete accounting and payment of interest at 1-1/2% per month; and determining if delay of payment was without justification, and if not, assessing a penalty of up to 25%, setting a date for final distribution, and requiring payment of an interest rate of 1-1/2% per month. The circumstances that may support a finding of reasonable justification for delay of payment or suspension of payment include but are not limited to certain good faith judgments as delineated in subsection (8) of Utah Code § 40-6-9(2010).

SUMMARY OF THE REPORT OF THE DIVISION'S INVESTIGATION AND NEGOTIATIONS

Ownership of the Land and Well . These nine Petitions all involve claims to proceeds from the production of oil from one well (1-2B1E well) located within Section 2, T2 South, R 1 E, USM. This Section was spaced by the Board in 1974 to allow one drilling unit per section. The section is 650.9 acres in size and contains tribal, allottee and fee lands that have been divided into six tracts. The Petitioners' claims are all based on ownership of part of a 40-acres tract of fee land (Tract 5). The well is located on a tribal tract. The well was originally drilled and completed in 1982 by Exxon Corporation. Exxon operated the well until March 1990 at which time the Ute Tribe took over operations until March 1996. The well was shut-in and not producing during the period of operation by the Ute Tribe. Uinta Oil and Gas placed the well back on production in April 1997. Uinta Oil and Gas also executed a new communitization agreement (CA) with the Ute Tribe. Since 1997, the well has been operated by Uinta Oil and Gas, ERHC/BASS, Mountain Oil Inc., and Homeland Gas

and Oil, Inc. During the period of time covered by these Petitions, Respondents Mountain Oil and Gas and Homeland Gas and oil were the operators.

The Interests of the Petitioners. The subject 40-acre fee tract was patented to Lulu Harris Murdock, deceased. The undivided interest was willed to 11 children. The petitioners and interveners represent 7 of the 11 children. Of the 11 children, 5 are leased interests. The remaining 6 are unleased interests. Of the 5 leased interests, 2 have filed petitions. Of the 6 unleased interests, 5 have filed petitions. Five of the original children are now deceased. Not all of the Petitioners have been able to provide documented chain of ownership to them from their representative heir.

Revenue Production. Revenue production records for the well were provided for the years from 2004 through December 2009, and were not disputed. These records demonstrate that there has been production for the period of time covered by the claims with the exception of one four-month period and one three-month period when the well was listed as shut-in. The Division was able to determine from these records the value of production and is able to calculate the amount of royalty due for the leased lands and the total amount of revenue produced from the unleased lands. The well operating costs were not provided or were inconsistent, and so the net revenue for the unleased lands can not be accurately estimated and was not determined.

Pooling. The status of the current CA is in question due to a challenge filed with the BIA and the BLM by two of the “leased lands” Petitioners. This challenge was provided to the Division after negotiations were completed. The Petitioners are challenging the validity of the tribal and allottee leases due to alleged lack of continuous production. This challenge puts in further question the amount of revenue that all of the land owners might be entitled to claim. Unleased owners have

no entitlement to payment until there is a CA or pooling. The burden is on the Petitioners or the Respondents to lease, or take other actions to seek pooling of the production.

Escrow of Funds. Although entitlement to payment requires pooling, the lands have been spaced and so the operator must take action to preserve the revenue from production for royalty or mineral owners. The revenues that have been produced for the period of the claims have not been placed in an interest bearing federally insured escrow account. Respondents have placed some funds in a suspense account and have indicated that they are willing to put the funds in an escrow account. The amount that would be paid into escrow would be the royalty amount due and not paid for the leased lands, and the full revenue for any unleased interests with the exception of the parties who reached a settlement.

CONCLUSION AND RECOMMENDATIONS

The Division does not recommend that the Board set these matters for an additional hearing at this time. The Board does not have authority to determine the validity of the tribal and allottee leases or the CA, which determination is solely within the authority of the BIA and BLM. The status of the leases and CA must be determined before further pooling can proceed. Obtaining pooling is required before the claims of the unleased lands owners can move forward. Pooling for a drilling unit involving tribal and allottee lands requires a valid CA. The unleased owners in this section will either have to be brought into the existing CA or a new one.

The payment of funds into escrow is all that can be accomplished at this time. The Respondents have committed in writing that they will place funds in an escrow account of the type

required by the statute. Beyond ordering the Respondents to comply with this commitment within a fixed time, there is no basis for the Board to take further action on these matters at this time.

The claims of Petitioners, Stuart Murdock and Ronald Murdock have been settled by agreement with the Respondents, and the Board should dismiss their Request for Agency Action with prejudice. The claims of the remaining Petitioners should be deferred and continued without date.

Finally, the Division advises the Board that in addition to these Petitioners, there are other persons in this drilling unit including some who have filed subsequent Petitions for an investigation and are not parties in this action. Although these claims (and potential for other claims) are not before the Board in this action, the requirement to escrow funds is statutory and the Board can and should require the Respondents as operators to determine the amounts due for the ownership in this section and place all unpaid amounts into an escrow account.

DATED this 18th day of March, 2010.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Steven F. Alder", written over a horizontal line.

STEVEN F. ALDER
FREDRIC DONALDSON
Assistant Attorneys General

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing DIVISION'S RESPONSE AND RECOMMENDATIONS TO THE BOARD for Docket Nos. 2010-001, 2010-002, 2010-003, 2010-004, 2010-005, 2010-006, 2010-007, 2010-014, 2010-018, and Cause No. 131-127 to be mailed with postage prepaid, this 18th day of March, 2009, to the following:

Saundria Whitmer, Petitioner
Route 3 Box 3383
Myton, UT 84052

Karnel Murdock, Petitioner
PO Box 353
Ft. Duchesne, UT 84026

Robbin Murdock, Petitioner
PO Box 732
Ft. Duchesne, UT 84026

Shirley Reed, Petitioner
Route 2 Box 2501
Roosevelt, UT 84066

Ronald Murdock, Petitioner
1587 East 3970 South
Salt Lake City, UT 84124

June Murdock, Petitioner
PO Box 767
Ft. Duchesne, UT 84026

Joyce Murdock, Petitioner
HC 67 Box 100
Ft. Duchesne, UT 84026

Michael S. Johnson
Megan DePaulis
Assistant Attorneys General
Utah Board of Oil, Gas & Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
[Via Email]

Mac E. Murdock, Petitioner
HC 67 Box 105
Ft. Duchesne, UT 84026

Stuart Murdock, Petitioner
8686 West Antler Avenue
Redmond, OR 97756

Mountain Oil and Gas, Inc.
PO Box 1574
Roosevelt, UT 84066

Benny Murdock, Petitioner
1069 Woodstock Road
King George, VA 22485

Homeland Gas and Oil, Ltd.
PO Box 1776
Roosevelt, UT 84066

A handwritten signature in black ink, appearing to read "Stuart Murdock", with a horizontal line drawn underneath the signature.